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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 ANTOINE DESHAWN BARNES,

12 Plaintiff,

13 v.

14 VAN NESS,

15 Defendant.
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No. 1:20-cv-00625-JLT-EPG (PC)

Appeal No. 22-15688

ORDER REGARDING *IN FORMA*
***PAUPERIS* STATUS ON APPEAL AND**
DIRECTING CLERK TO SERVE A COPY
OF THIS ORDER ON THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

(Doc. 69)

18 On April 21, 2022, the Court granted Defendant's motion to dismiss this action for failure
19 to prosecute and/or to comply with a court order. (Doc. 62.) On May 2, 2022, Plaintiff appealed.
20 (Doc. 64.)¹ On May 31, 2022, the Ninth Circuit Court of Appeals referred the matter back to this
21 Court for the limited purpose of determining whether *in forma pauperis* status should continue for
22 the appeal. (Doc. 69.)

23 As the Court noted in its order dismissing this action, "Plaintiff has not identified any
24 facts to undermine the findings of the magistrate judge. It is undisputed that Plaintiff failed to
25 respond to Defendant's discovery requests, despite the Court order." (Doc. No. 62, p. 2.) Plaintiff
26 has not, and in his appeal still does not, address his failure to comply with court orders or his
27 failure to participate in discovery or to oppose Defendant's motion to dismiss. Because Plaintiff's
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¹ Plaintiff's notice of appeal also contained his informal opening brief.

arguments were and are irrelevant to the legal issues presented and/or are wholly without merit, the Court finds that Plaintiff's appeal is frivolous. Accordingly, the Court **ORDERS**:

1. The appeal is declared frivolous;
2. Pursuant to 28 U.S.C. § 1915(a)(3), Plaintiff is not entitled to proceed *in forma pauperis* in Appeal No. 22-15688;
3. Pursuant to Federal Rule of Appellate Procedure 24(a)(4), this order serves as notice to the parties and the United States Court of Appeals for the Ninth Circuit of the finding that Plaintiff is not entitled to proceed *in forma pauperis* for this appeal; and
4. The Clerk of Court is directed to serve a copy of this order on the parties and the United States Court of Appeals for the Ninth Circuit.

IT IS SO ORDERED.

Dated: **June 6, 2022**


UNITED STATES DISTRICT JUDGE